

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NUMBER: 10-20123

HONORABLE VICTORIA A. ROBERTS

v.

DAVID BRIAN STONE, et al.,

Defendant.

**ORDER REQUIRING DEFENDANTS TO COMPLY WITH RECIPROCAL
DISCOVERY OBLIGATIONS UNDER FED. R. CRIM. P. 16(b)**

Defendants previously demanded—and the Government provided—written summaries of expert witness testimony pursuant to Fed. R. Crim. P. 16(a)(1)(G). Accordingly, the Government is entitled to a summary of the anticipated testimony of any expert witnesses Defendants intend to call in their case-in-chief. Fed. R. Crim. P. 16(b)(1)(c).

The Government first requested reciprocal discovery by letter dated May 11, 2010. The Government renewed its demand in a letter dated January 17, 2012, noting that Defendants had provided no discovery of any kind. On January 24, 2012, the Government filed a motion for reciprocal discovery (Doc. 615).

Rule 16(b) unequivocally requires Defendants to provide the Government with a summary of the testimony of experts it intends to call. Courts of Appeals routinely uphold the exclusion of defense expert testimony where a defendant fails to comply in a timely manner with its Rule 16(b) obligations. *U.S. v. Campbell*, 81 Fed. Appx. 532, 535 (6th Cir. 2003)(upholding exclusion of expert testimony where defendant failed to disclose witness as an expert as required

by Rule 16(b)); *U.S. v. Hoffecker*, 530 F.3d 137, 188 (3d Cir. 2008) (upholding exclusion of defense experts where defendants notified the government of their intent to call them three days before trial, and 34 months after the indictment issued); *U.S. v. Thai*, 141 F.3d 1182 (9th Cir. 1998)(upholding exclusion of defense experts where defendants failed to make Rule 16(b) disclosure until 5 days prior to trial). The fact that an expert may not have produced a formal report does not affect a defendant's obligation to comply with Rule 16(b). *See Nichols v. Bell*, 440 F.Supp.2d 730, 821 (E.D. Tenn. 2006) (interpreting Tennessee rule of criminal procedure materially identical to Fed. R. Crim. P. 16(b)).

Defendants must provide the Government summaries of testimony of any expert witness they intend to call in accordance with Rule 16(b), by **noon, Wednesday, March 21, 2012.**

The Government's Motion for Reciprocal Discovery is **GRANTED**.

IT IS ORDERED.

S/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: March 19, 2012

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on March 19, 2012.

S/Linda Vertriest

Deputy Clerk